

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et
al.*¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

Re: Docket No. 3298

**DECLARATION OF MARK CHAIT IN SUPPORT OF OBJECTION
OF BENDERSON DEVELOPMENT COMPANY LLC TO NOTICES OF
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

I, Mark Chait, declare:

1. I am the Executive Director for Leasing at Benderson Development Company LLC (“Benderson”). Benderson is an affiliate of and the property manager for the landlords (the “Landlords”) for the leased premises (the “Leased Premises”) listed on **Exhibit A**. The Landlords are the landlords to the above-captioned Debtors, as tenants, with respect to the Leased Premises.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SHC Licensed Business LLC (3718); and SHC Promotions LLC (9626). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

2. Based out of Benderson's Florida office, I oversee leasing, operations and asset management of numerous shopping centers in the company's United States portfolio. As the Executive Director of Leasing, I am familiar with Benderson's asset portfolio, documents, and business records, and I (and those working with me and at my direction) have been personally involved in various capacities in connection with asset management, leasing, dispositions, and lease and claims administration.

3. I have over twenty years of experience in the real estate industry. I joined Benderson in 2000 when it was headquartered in Buffalo, NY, and have been involved with leasing matters and property management for the past 19 years.

4. This declaration is submitted in response to the Notice of Assumption and Assignment filed at Docket Nos. 3298 (the "Assignment Notices"). Pursuant to the Assignment Notices, Transform Holdco, LLC ("Transform"), the buyer of substantially all of the Debtors' assets, has designated the Leases for assignment to Transform Operating Stores LLC (the "Assignee").

5. In connection with my role, I am one of the custodians of records of the Landlords' books, records, and files relate to the use and occupancy of retail premises at the Leased Premises. I am personally familiar with the Leased Premises, all of which are located in shopping centers. The Leases are not attached to this declaration given the volume of the documents but can be produced upon request. If called upon to testify in this proceeding as to the matters set forth in this declaration, I could and would competently testify thereto, since the facts set forth herein are personally known to me to be true.

6. The Buffalo, NY and Oakdale, CA Leased Premises are located in Delaware Hertel Plaza and K-Mart Plaza, "shopping centers" as that term is used in the Bankruptcy Code. I am

aware that when determining whether a lease is in a shopping center, courts generally consider whether there are a combination of leases, whether all leases are held by a single landlord, the presence of a common parking area, and the contiguity of retail stores. Delaware Hertel Plaza and K-Mart Plaza satisfy these requirements. The websites listed on **Exhibit A** provide details as to the location of the Leased Premises, other tenants in the shopping center and the site plan.

7. Regardless of whether the store is located in a shopping center, in the ordinary course of its business, Benderson and its affiliates, including the Landlords, require credit enhancements, in the form of security deposits, letters of credit and third party guaranties when leasing (or assessing a proposed assignment of a lease) to certain companies based on their financial information and history. In the case of a new company, particularly a recently-capitalized “newco” created for the purpose of acquiring distressed assets, Benderson would ordinarily seek security in the form of cash deposits or letters of credit covering monetary obligations under assigned leases. Alternatively, or in combination with such deposits, when faced with a potential lease assignment to a “newco,” the landlord would typically seek a continuing guaranty of lease obligations from a parent company with sufficient assets to meet those guaranty obligations.

8. The Debtors, Transform, and the Assignee have not provided Benderson with any information analyzing the Assignees’ current or projected financial condition or operational capabilities compared to the Debtors at any time period, including at the time the Leases were entered into.

9. To my knowledge, neither the Assignees nor Buyer have proposed to invest significant sums in the Leased Premises through remodeling, restoration and other capital improvements that would demonstrate a long-term commitment to the Leased Premises and potentially ameliorate credit risk.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: University Park, Florida
May 2, 2019

/s/ *Mark Chait*
Mark Chait

EXHIBIT A

<u>Store No.</u>	<u>Mall Name</u>	<u>Location</u>	<u>Website</u>
3415	Delaware Hertel Plaza	Buffalo, NY	https://www.benderson.com/property.aspx?id=2039&type=RET
3842	Kmart Plaza	Oakdale, CA	https://www.benderson.com/property.aspx?id=2160&type=RET